IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12544 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRUBHAI DEVABHAI CHHARA

Versus

COMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12544 of 2004

MR RG CHHARA for Petitioner No. 1

MR ADIL MEHTA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MRS HB PUNANI AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 11th August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 11th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the fact of filing solitary criminal case against the petitioner before Prohibition Police Station, Western Zone on 10th July, 2004, under Bombay Prohibition Act. It was alleged that the petitioner was found in possession of prohibited country liquor to the extent of 1000 ltrs. The detaining authority examined thoroughly and exhaustively the investigation papers of the said crime registered against the petitioner. The detaining authority came to the conclusion that the petitioner was engaged in the activities of storing, selling and transporting prohibited liquor and, therefore, the petitioner was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the illegal anti social activities of the petitioner were prejudicial to the maintenance of public order as well as adversely affecting the public health. The detaining authority came to the conclusion that illegal activities of the petitioner were required to be prevented forthwith. After considering the other remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative, except the detention of the petitioner under the PASA Act. The detaining authority, therefore, passed an order of detention of the petitioner under the PASA Act, which is under challenge in this petition.

3. Learned advocate Mr.Adil Mehta for the petitioner and learned AGP Mr.H.M.Prachchhak, for the respondent No.3, were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP, is taken into consideration.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue, whether the detaining authority applied mind properly to the relevant material placed before him to reach to the subjective satisfaction.

5. The grounds which are placed on record clearly denote that in the said crime registered against the petitioner, he came to be arrested on 10th August, 2004, the order of detention came to be passed on 11th August, 2004. Therefore, the petitioner was in judicial custody, when the detention order came to be served upon him. In this respect, as is found evident from the grounds of the detention that the detaining authority reached to the subjective satisfaction that though in the criminal case registered against the petitioner, he was in judicial custody, but at any time, he was likely to move an application for bail. The detaining authority also reached to the subjective satisfaction that on so moving bail application by the petitioner, he was likely to be released on bail by the Competent Authority. The detaining authority also came to the conclusion that on so releasing the petitioner on bail, he was likely to continue his illegal activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. In the present case, while going through the grounds and papers, relied upon by the detaining authority, it clearly appears that there was no material placed before the detaining authority to come to the conclusion that firstly, the petitioner was likely to move an application for bail. Likewise, there was no material at all, placed before the detaining authority to infer that on moving such bail application, the petitioner-detenu was likely to be released on bail. The subjective satisfaction, therefore, arrived at by the detaining authority in this respect is not valid, legal and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City

on 11th August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Dhirubhai Devabhai Chhara is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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